



JUVENILE APPEALS

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WHO can appeal?

8-235: **Any aggrieved party** in any juvenile court proceeding may appeal from a **final order** of the juvenile court to the court of appeals.



AGGRIEVED PARTY

The judgment operates to deny the party some personal or property right or to impose a substantial burden on the party.

- ❖ Includes a juvenile's parent who is ordered to pay restitution.
- ❖ Includes the State without the restrictions imposed in criminal cases. See 13-4032
- ❖ Does not include victims.



WHAT May be Appealed

FINAL ORDER

- ❖ Disposition, or if separate restitution hearing, the restitution order.
- ❖ Order transferring juvenile to adult court.
- Ruling on a motion to reconsider is NOT a final order and will not extend time for filing notice of appeal.



WHEN to Appeal

Notice of appeal filed with the clerk of the juvenile court no later than 15 days after final order is filed with the clerk.

- ❖ Final order must be **in writing** and **signed** by the judge.
- ❖ Time may NOT be extended.



STAY OF JUVENILE COURT ORDER

- ❖ Order of juvenile court shall not be stayed pending appeal unless COA in its discretion grants a stay.
- ❖ Based on likelihood of reversal, best interest of child, any other legal or equitable questions.



Juvenile court may proceed where:

- ❖ COA revests jurisdiction and specifically authorizes or directs the juvenile court to do rule on an issue.
 - E.g., to rule on motion to reconsider.



FORM: HOW to Appeal

- ❖ ARCAP
- ❖ Captioning
- ❖ Specify party appealing and order appeal
- ❖ Service of notice on parties and court reporters

Presumptive Record



- ❖ **Transcripts** of adjudication and disposition hearings; or, probable cause and transfer portion of transfer hearings.
- ❖ Pleadings, orders, and other documents filed with the juvenile court clerk (**legal file**)
- ❖ **Exhibits**
- ❖ Items **added** in designations of record.
- ❖ Except items **deleted** in designations of record



Legal File v. Social (Red) File

- ❖ Legal file: pleadings, motions, minute entries, orders, etc. Maintained by clerk of juvenile court and are public record.
- ❖ Red file: disposition reports, psych evals, and so forth. Maintained by the probation department and confidential. NOT part of presumptive record on appeal, and not public record.



Designation of Record

- ❖ Appellant: file designation of record 5 days after filing Notice of Appeal
- ❖ Appellee: file supplemental designation of record 12 days after Notice of Appeal filed.
- ❖ Also, deletions from presumptive record.



Docketing / Transmission of Record

- ❖ Docketing with COA upon receipt of notice of appeal.
- ❖ Copies of record on appeal sent within 20 days of filing of notice of appeal.
- ❖ Transcripts within 30 days of notice where appellant is the State or represented by appointed counsel; or 30 days after appointment of appellate counsel; or 30 days after private counsel has made arrangements to pay.



Service

- ❖ Notices, designations of record, disputes over the record, and related pleadings under Rules 103-105 are filed in **the juvenile court** and a copy lodged with the presiding judge.
- ❖ Briefs and motions under Rules 106-107 are filed in **the COA** via Turbo File.
- ❖ Civil Rule 5 governs service on parties.
Note: most pleadings now served electronically, instantaneously. This may affect your response time.



Extensions

- ❖ Rule 108: Motions to extend time for juvenile court pleadings filed with presiding juvenile court judge. Note: NO extensions for filing notice of appeal.
- ❖ Motions to extend time for appellate pleadings filed with COA. Governed by ARCAP 5, via Rule 103(A).



BRIEFS

- ❖ Word limits: 7,000 for principle brief; 3,500 for reply
- ❖ Time limits:
 - Opening brief: 20 days after notice of completion from COA
 - Answering brief: 20 days after opening brief.
 - Reply: 10 days after answering brief.
 - Extensions: one, for good cause.

Opening Brief: ARCAP Rule 13(a)



- Table of contents
- Table of authorities
- Introduction
- Statement of the case
- Statement of facts
- Statement of issues
- Argument supported by citation to the record and legal authority
- Conclusion



Answering Brief: ARCAP 13(b)

- ❖ No need for statement of the case, facts, or issues unless you find Appellant's rendition insufficient or incorrect.
- ❖ May raise any issue presented in the juvenile court without the need for a cross-appeal, and the appellate court may affirm the judgment based on any such grounds.
- ❖ But may not seek relief that enlarges the appellee's rights or lessens the appellant's rights without cross-appeal.



REPLY

ARCAP 13(c): If the appellant files a reply brief, it must be strictly confined to rebuttal of points made in the appellee's answering brief.

- ◆ Note: If you decide not to reply, it is good practice to notify the COA that you do not intend to file a reply so that case can be deemed at issue sooner. Notice of Acknowledgment.



Substance: Why to Appeal

❖ Strategy

❖ Making your record



Petition for Review

- ❖ Must file within 30 days after decision.
- ❖ Cross-petition must be filed within 15 days of petition.
- ❖ Response due within 30 days of petition.
- ❖ No reply unless granted permission by ASC
- ❖ Petition, Response, and cross-petition may not exceed 3,500 words.



PR CONTENT

- ❖ Issues decided by COA presented for review; also, *separately and without argument*, additional issues that were presented to but not decided by COA.



PR CONTENT

- ❖ Facts material to a consideration of the issues presented for review with appropriate references to the record on appeal.



PR CONTENT

- ❖ Reasons why the petition should be granted, including:
 - No Arizona decision controls;
 - ASC decision should be overruled;
 - Conflicting decisions by COA;
 - Important issues of law have been incorrectly decided.



PR CONTENT

- ❖ Appendix: documents necessary for a determination of the issues presented for review.
- ❖ Note: **IF** ASC grants review, it will have access to the entire record.
- ❖ Note: When notified of petition, the clerk of the COA makes available to clerk of ASC the briefs filed in COA.



RESPONSE

- ❖ Due 30 days after petition is filed.
- ❖ Response not required
- ❖ Same content format as petition
- ❖ List separately, without argument, any additional issues not raised by petition that were presented to but not decided by COA which may be necessary for review.



MANDATE.

- ❖ If no PR, clerk of COA files mandate at expiration of time to file PR.
- ❖ If PR is filed but review is denied, clerk of COA files mandate after receipt of order denying review.
- ❖ If review granted, mandate issues out of ASC.



MOTION TO DESIGNATE

Supreme Court 111(b): Decision designated as an opinion when it:

- ❖ Establishes, alters, modifies, clarifies law
- ❖ Calls attention to overlooked rule of law
- ❖ Criticizes existing law
- ❖ Involves a legal or factual issue of unique interest of public importance.



ORAL ARGUMENT

Request must be made no later than 10 days after due date of reply brief or actual filing of reply; or for PR, within 15 days of ASC's order granting review.

- Prepare well, and practice, practice, practice!
- Answer all questions when they are asked



SUPPLEMENTAL AUTHORITY

- ❖ Pertinent and significant legal authority that comes to attention of party after filing brief or after oral argument, before decision is entered.
- ❖ State concisely, without argument, the legal proposition supported by the supplemental citation.



SPECIAL ACTIONS

Governed by Rules of Procedure for Special Actions; no special rules or procedure for juvenile court.

- ❖ Victims as defined under Criminal Rule 39(a) may seek special action relief from an order denying any right guaranteed to victims under Arizona Constitution; may be brought by prosecutor at request of victim.



QUESTIONS RAISED

- ❖ Defendant failed to exercise discretion which he or she has a duty to exercise; or failed to perform a non-discretionary duty required by law.
- ❖ Defendant acted or threatens to act without or in excess of authority.
- ❖ Determination was arbitrary and capricious or an abuse of discretion.



WHERE AND WHEN TO FILE

- ❖ Juvenile court matters, in the COA
- ❖ No specific deadline, but generally, the same time allowed for filing notice of appeal unless circumstances justifying delay are shown.
- ❖ Unlike an appeal, can take a special action from an order granting or denying a motion to reconsider



CONTENT OF PETITION

- ❖ Jurisdictional statement
- ❖ Statement of issues
- ❖ Statement of material facts
- ❖ Argument with citations to authority and references to the record
- ❖ Attach copy of order challenged
- ❖ Appendix with supporting documents
- ❖ Petition may not exceed 10,500 words



SERVICE / RESPONSE

- ❖ At time of filing of petition, COA will issue an order setting dates which includes time for response
- ❖ Response due 7 days after petition filed, or date set by order
- ❖ Response not required
- ❖ COA may, and often does, decline to accept jurisdiction before response is due



STAYS

- ❖ Party seeking stay must first ask juvenile court (orally or in writing) and file a motion for stay in COA only if juvenile court denies
- ❖ Party seeking stay must set up telephonic stay hearing with COA panel and other parties



JURISDICTION

Jurisdiction is discretionary. Reasons to accept:

- ❖ No equally plain, speedy, adequate remedy by appeal
- ❖ Order will cause irreparable harm
- ❖ Pure question of law in matter that is likely to recur
- ❖ Issue capable of repetition yet evading review



REVERSE TRANSFER ISSUES

- ❖ Transfer of criminal charges re juvenile direct-filed as an adult to juvenile court under 13-504 (by motion or sua sponte)
- ❖ Same criteria as is used to transfer juvenile to adult court, except no probable cause phase.
- ❖ Special actions have been filed raising issues that involved past or looming eighteenth birthday. COA has yet to accept jurisdiction.



COLLATERAL REVIEW

- ❖ No right / mechanism for post-adjudication relief proceedings akin to Criminal Rule 32, or Rule 24 motions for new trial.
- ❖ COA has in past stayed appeal and revested jurisdiction in juvenile court to decide ineffective assistance of counsel claim not readily apparent from record
- ❖ COA has also done so for juvenile court to determine motion for new trial under Civil Rule 60